

3 FAM 7270

THIRD-COUNTRY NATIONAL (TCN)

(TL:PER-409; 07-24-2001)

3 FAM 7271 POLICY

3 FAM 7271.1 General

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

A third-country national (TCN) is an individual who meets the following criteria.

(1) Is neither a citizen of the United States nor of the country to which assigned for duty.

(2) If employed, is eligible for return travel to the TCN's home country or country from which recruited at U.S. Government expense.

(3) Is on a limited appointment for a specific period of time.

(4) Encumbers a direct-hire, personal service agreement (PSA) or personal service contract (PSC) FSN position covered under the local compensation plan.

Such an employee normally is recruited from outside the host country and relocated from the point of recruitment to the host country. The return travel obligation assumed by the U.S. Government may have been the obligation of another employer in the area of assignment if the employee has been in substantially continuous employment which provided for the TCN's return to home country or country from which recruited.

(5) For USAID, TCNs employed under a PSC are subject to provisions of AID HB 14 (AIDAR), Appendix J.

3 FAM 7271.2 Repatriation Agreement

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

a. The personnel action (Form SF-50) effecting employment must indicate that the employee is being hired as a TCN and that return travel will be provided by the U.S. Government unless this obligation is assumed by another employer at the time of the employee's termination. This personnel action constitutes the Repatriation Agreement and may be augmented with a completed "Conditions of Employment Agreement" or a contract for personal services abroad, as appropriate. Employing posts are responsible for complying with local employment requirements.

b. An applicant who is located in the country of intended assignment and who does not have a repatriation agreement with the applicant's most recent employer may not be hired as a TCN. However, the applicant may be hired under the same terms as an employee who is a citizen of the host country.

3 FAM 7271.3 Limited Duration of Employment

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(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

All persons hired as TCNs must be informed of the limited duration of their employment. As a result, TCN employees should not expect promotions unless hired at a level which is less than the level of the position or the position is reclassified upward due to a change in the level of duties.

3 FAM 7271.4 When TCN's Are Appropriate

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

The appointment of a TCN employee is effected only when:

- (1) Qualified persons are not available in the host country;
- (2) Limitation of time or other conditions prevent the training of persons in the host country for the job; or

(3) It is determined that program efficiency and policy objectives can be achieved only by using TCNs as a temporary substitute for available, eligible and qualified U.S. citizens and persons from the host country.

3 FAM 7272 RECRUITMENT

3 FAM 7272.1 Sources

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

Sources of recruitment are:

- (1) The nearest foreign area having qualified candidates; and
- (2) An international agency or any firm employing third-country nationals in the host country.

3 FAM 7272.2 Procedures

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

See 3 FAH-2 H-300 for implementing procedures.

3 FAM 7273 VISAS, WORK PERMITS, IMPORT PRIVILEGES, TAXES, AND SOCIAL SECURITY

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

The post requesting the employment of a TCN should determine whether:

- (1) The host government requires a visa for the entry of the employee and dependents, if any, and a work permit for the employee;
- (2) Import privileges will be granted, where import duties must be paid, and the amounts required, so that the employee may be correctly informed;
- (3) Local tax laws will apply to the employee and, if so, the extent of the employee's responsibility;

(4) Guaranty of safe conduct can be assured if international hostilities or internal revolt should endanger the employee's safety; and

(5) Specific local requirements would affect shipment of household and personal effects upon repatriation.

3 FAM 7274 TCN COMPENSATION AND CLASSIFICATION POLICIES

3 FAM 7274.1 Authority

3 FAM 7274.1-1 Locality Based Compensation System

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

As required by Section 408(a)(1) of the Foreign Service Act of 1980, compensation for TCNs shall be based on prevailing practices for corresponding types of positions in the locality as determined by the FSN Position Classification System. Locality for TCN compensation purposes is generally the locality of employment or, as otherwise determined under section 3 FAM 7274.3, the locality from which recruited.

3 FAM 7274.1-2 Washington Approval of Compensation Plan

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

All new local compensation plans, including those covering TCNs, and all revisions or amendments in existing plans are subject to approval by Washington headquarters. Embassies must submit supporting salary data and worksheets of local salary surveys as outlined in 3 FAM 7274.3 and 3 FAM 7320.

3 FAM 7274.2 Classification

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

FSN positions must be classified in accordance with the instructions set forth in 3 FAH-2 H-400, regardless of the nationality of the incumbent. A position's assigned work must be classified before any recruitment or pay actions are taken.

3 FAM 7274.3 Determining Salary Rates

(TL:PER-409; 07-24-2001)

(Uniform State/Agriculture/BBG/Commerce/USAID)

(Applies to Foreign Service Nationals Only)

The salaries of TCNs must be based on prevailing practice and paid in local currency unless an exception is granted in accordance with *4 FAM-3 H-556.2*. The locality used for measuring the practices can vary since TCNs generally are recruited from outside the country in which employed. In order to follow prevailing practice, TCN salaries must be determined in the manner described below. Each post must uniformly apply one of the following paragraphs (1, 2, or 3) of this section to all TCNs at post.

(1) The employing post must use the salary rate listed on the local compensation plan (see 3 FAM 7322) for the appropriate grade level of the TCN's duties and responsibilities unless subparagraphs (a) or (b) below applies.

(2) If evidence exists that there is a prevailing TCN practice in the country where the TCN is to be employed, post must obtain survey data on this practice and propose use of this data for review by Washington headquarters in the following circumstances.

(a) At the time of a full or salary change survey, the employing post or persons performing the survey must determine prevailing pay practices for TCNs who occupy types of positions in the host country corresponding to those (to be) occupied by TCNs employed by post or positions equivalent to the key positions listed in *3 FAH-2 H-200, Appendix A and 3 FAH-2 H-200, Appendix B*. This determination must be made only among the firms used for regular survey purposes. The resulting data, if any, must be sent to HR/OE for analysis and to State's regional bureau for approval prior to use and must be kept separate from the data used to establish the balance of the local compensation plan.

(b) In the absence of a full or salary change survey, the employing post must conduct its own survey on TCN practices among the firms used for regular survey purposes after obtaining guidance from HR/OE regarding data needed for analysis and approval of TCN salary rates.

(3) If there is no local prevailing TCN practice and use of the local salary schedule prevents post from being able to recruit or retain TCNs, then after obtaining approval of Washington headquarters agencies, post may use the salary rate listed on the local compensation plan in the country from which the TCN is (to be) recruited, or in the TCN's home country if more appropriate than the country from which recruited, for the appropriate grade level of the TCN's duties and responsibilities. Subject to paragraph (4) below post must either:

—Pay this rate in the local currency of the schedule used if legal under host country's law and adjust this rate when the schedule is adjusted in the country from which the TCN is recruited or in the TCN's home country whichever is used;

—After obtaining approval of Washington headquarters, agencies fix this rate at the time of hire in local currency of the country of USG employment at current exchange rates subject to periodic reviews by post and Washington headquarters agencies; or

—A combination of (a) and (b), *above*.

(4) Any resulting TCN salary rates that differ from those of employees on the local compensation plan of the country wherein the TCN is employed must be annotated on that plan.

3 FAM 7274.4 Determining Benefits

3 FAM 7274.4-1 General

(TL:PER-409; 07-24-2001)
(Uniform State/Agriculture/BBG/Commerce/USAID)
(Applies to Foreign Service Nationals Only)

a. TCN benefits must be based on prevailing practice. Each post must uniformly apply the benefit provisions of the local compensation plan (see 3 FAM 7340) to all TCNs with the provision for exceptions as described below without duplicating benefits already received under local compensation plan. Any decisions may depend on local laws and whether the host country will provide duty-free entry of household and personal effects.

b. Benefits for TCNs that differ from those of FSN employees of the host country must be annotated on the local compensation plan, and delineated in the text of the approved local compensation plan.

3 FAM 7274.4-2 Optional Benefits

(TL:PER-409; 07-24-2001)

(Uniform State/Agriculture/BBG/Commerce/USAID)

(Applies to Foreign Service Nationals Only)

a. Each post may determine which benefits vary in prevailing practice for TCNs using the procedures in section 7274.4. If prevailing practice warrants, separate direct benefits may vary by each individual or category of TCN but all such benefits are subject to the following considerations and limitations:

- (1) Budget;
- (2) Local law;
- (3) Benefit levels applicable to *U.S. Government* personnel; and
- (4) Length of tour of duty (some benefits may not be appropriate for tours of one year or less).

b. If no data exist using the procedure in 3 FAM 7274.4 and a post's category of TCN employee or conditions of employment do not match the category or conditions in prevailing practice or for local nationals of the host country, Washington headquarters, in exceptional circumstances, may authorize an offset in salaries appropriate to the type of benefit.

c. Generally, the automobiles of TCNs will not be shipped at U.S. Government expense. Exceptions to this rule may be approved at the post. See 6 FAM and 3 FAM 7274.4-3) for regulations on travel and transportation of effects.

3 FAM 7274.4-3 Mandatory Benefits

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(Uniform State/Agriculture/BBG/Commerce/USAID)

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These benefits will apply to all TCNs according to their tours of duty regardless of localities of employment.

(1) Tours of Duty in Excess of One Year—A TCN whose period of service is one year or more is entitled to the following travel privileges (in accordance with 6 FAM) on recruitment travel orders.

(a) Travel

—Economy class air accommodations for direct travel from the country in which recruited to the country of assignment for TCN and dependents. If economy class is not available, the next least expensive class, which is less than first class, may be authorized. Fly America provisions apply in accordance with 6 FAM. Dependents may travel at *U.S.* Government expense to reside with the employee only if such travel is approved by the employing mission in the country where the TCN will be employed.

—Dependents of a TCN, for purposes of travel to and from the country of assignment, include the spouse and those children (including adopted children and stepchildren) who are under the age of 21 and unmarried, or over age 20 and incapable of self-support.

(b) Per Diem

Per diem for actual direct-route air travel time for the TCN and dependents who reside with the employee, not to exceed that provided by the Standardized Regulations.

(c) Shipping Allowances

—These allowances will be determined after post has decided whether government housing and/or furnishings will be provided. The following limits are provided as maximums. Post may authorize lower amounts in light of local circumstances.

—The employee may ship, by air freight, household and personal effects not in excess of 250 pounds gross weight for the employee, 200 pounds for the first authorized dependent, 150 pounds for the second, and 100 pounds for each additional authorized dependent.

—A limited shipment of household effects may be authorized when the post provides basic furnishings. A limited shipment may not exceed 2500 pounds net weight for a TCN with authorized dependents, or 1500 pounds net weight for a TCN without dependents.

—A full shipment of household effects may be authorized when the post provides no basic furnishings. A full shipment may not exceed 7500 pounds net weight for a TCN with authorized dependents, or 4500 pounds net weight for a TCN without dependents.

(2) Tours of Duty for One year or Less - A TCN whose period of service is less than one (1) year is entitled to the following travel privileges (in accordance with 6 FAM) on recruitment travel orders:

(a) Travel

—Economy class accommodations for direct air travel from the country in which recruited to the country of assignment for TCN only. If economy class is not available, the next least expensive class which is less than first class may be authorized. Fly American provisions apply, in accordance with 6 FAM.

(b) Per Diem

Per diem for actual direct-route air travel time for the TCN.

(c) Shipping Allowance (Personal Effects)

In addition to the free baggage allowance provided by the carrier, transportation of personal effects not in excess of 400 pounds (net weight), 100 pounds (gross weight) of which may be shipped by air and the balance by air or surface carrier, whichever is most economical. When local circumstances warrant, the TCN may be authorized up to an additional 100 pounds (net weight).

(d) Household Furnishings and Automobiles

Household furnishings and automobiles are not shipped at U.S. Government expense.

(3) Repatriation Travel—Upon termination of employment, repatriation travel of a TCN and eligible dependents will be provided to the home country or country from which recruited as determined by the post. A TCN must depart within 30 days after termination of employment, otherwise the TCN forfeits the repatriation travel benefit.

(4) Repatriation Allowances—The TCN will be authorized to ship from the host country the same amount of weight the TCN was authorized to bring into the country.

Each post may authorize travel from the host country for a TCN and/or authorized dependents, and return travel to the host country if appropriate, during the period of employment and only in the following cases:

(a) Need for medical care not available in the host country;

(b) Serious effect on physical or mental health if residence at post is continued;

(c) Preparation and return of the remains of a TCN or authorized dependent; and

(d) Emergency evacuation under the provisions of Chapter STNRG-0600 Standardized Regulations (Government Civilians, Foreign Areas).

3 FAM 7275 THROUGH 7279 UNASSIGNED